

**Deposition Designations for:
RICHARD FINKE
March 30, 2009**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence**

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH - Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

W.R. Grace & Co., et al.

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
W. R. GRACE & CO.,) Case No. 01-01139 JKF
et al)
)
Debtors)

Deposition of RICHARD CHARLES FINKE
taken pursuant to notice at the law offices of
Drinker, Biddle & Reath, LLP, 1100 North Market
Street, Suite 1000, Wilmington, Delaware,
beginning at 9:35 a.m., on Monday, March 30,
2009, before Allen S. Blank, Registered Merit
Reporter and Notary Public.

APPEARANCES:

LISA G. ESAYIAN, ESQUIRE
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For - Debtors

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W.R. Grace & Co., et al.

Page 2	Page 4
<p>1 APPEARANCES: CONTINUED 2 JOHN W. KOZYAK, ESQUIRE 3 KOZYAK TROPIN THROCKMORTON 4 2525 Ponce de Leon, 9th Floor 5 Miami, FL 33134 6 7 For - Anderson Memorial Hospital 8 9 MATTHEW I. KRAMER, ESQUIRE 10 BILZIN, SUMBERG, BAENA, PRICE 11 & AXELROD, LLP 12 200 S. Biscayne Boulevard, Suite 2500 13 Miami, FL 33131-5340 14 15 For - PD Committee 16 17 ARLENE G. KRIEGER, ESQUIRE 18 STROOCK & STROOCK & LAVAN, LLP 19 180 Maiden Lane 20 New York, NY 10038-4982 21 For - Official Committee of 22 Unsecured Creditors 23 24 ALAN B. RICH, ESQUIRE 25 Elm Place 26 1401 Elm Street, Suite 4620 27 Dallas, TX 75202 28 For - PD FCR 29 ELISA ALCABES, ESQUIRE 30 SIMPSON, THACHER & BARTLETT, LLP 31 425 Lexington Avenue 32 New York, NY 10017-3954 33 34 For - Travelers Casualty & Surety 35 Company 36 KATHLEEN A. ORR, ESQUIRE 37 ORRICK, HERRINGTON & SUTLIFFE, LLP 38 1152 15th Street, N.W. 39 Washington, D.C. 20005 40 41 For - David Anstern, Asbestos PI</p>	<p>1 APPEARANCES: CONTINUED 2 ANDREW F. CRAIG, ESQUIRE (VIA TELEPHONE) 3 CUYLER BURK, LLP 4 Parsippany Corporate Center 5 Four Century Drive 6 Parsippany, NJ 07054 7 For - Allstate Insurance Company 8 LAURA M. STOVER, ESQUIRE (VIA TELEPHONE) 9 NEARHOOD LAW OFFICES 10 7537 E. McDonald Drive 11 Scottsdale, AZ 85250 12 - and - 13 GABRIELLA V. CELLAROSI, ESQUIRE 14 (VIA TELEPHONE) 15 ECKERT SEAMANS 16 1747 Pennsylvania Avenue, N.W. 17 Suite 200 18 Washington, D.C. 20006-4604 19 For - Maryland Casualty Insurance 20 Company and Zurick 21 Insurance Company 22 ***** 23 RICHARD CHARLES FINKE, 24 the deponent herein, having first been 25 duly sworn on oath, was examined and 26 testified as follows: 27 EXAMINATION 28 BY MR. SPEIGHTS: 29 Q. Would you state your full name, please, 30 sir? 31 A. Yes. Richard Charles Finke, F-i-n-k-e. 32 Q. Mr. Finke, who are you employed by?</p>
Page 3	Page 5
<p>1 APPEARANCES: CONTINUED 2 MICHAEL F. BROWN, ESQUIRE 3 DRINKER, BIDDLE & REATH, LLP 4 One Logan Square 5 18th and Cherry Streets 6 Philadelphia, PA 19103-6996 7 For - Government Employees Insurance 8 Company, Columbia Insurance, 9 One Beacon America Insurance 10 Company and Seaton Insurance 11 Company 12 SHANNON L. GRIFFIN, ESQUIRE 13 OMELVENY & MYERS, LLP 14 Times Square Tower 15 7 Times Square 16 New York, NY 10036 17 For - Arrowood Indemnity Company, 18 f/k/a Royal Indemnity Co. 19 20 MARNIE E. SIMON, ESQUIRE 21 STEVENS & LEE 22 1818 Market Street, 29th Floor 23 Philadelphia, PA 19103-1702 24 - and - 25 JOHN D. DEMMY, ESQUIRE (VIA TELEPHONE) 26 STEVENS & LEE 27 1105 North Market Street, 7th Floor 28 Wilmington, DE 19801 29 30 For - Fireman's Fund Insurance 31 Company 32 SHAYNE W. SPENCER, ESQUIRE 33 ELIZABETH DeCRISTOFARO, ESQUIRE (VIA 34 TELEPHONE) 35 FORD, MARRIN, ESPOSITO, WITMEYER 36 & GLESER, LLP 37 Wall Street Plaza 38 New York, NY 10005-1875 39 For - CNA Insurance Company</p>	<p>1 A. W. R. Grace & Co. 2 Q. How long have you been employed by Grace? 3 A. Twenty years. 4 Q. Can you tell me the approximate date you 5 started? 6 A. No. I can tell you the exact date I 7 started. February 27, 1989. 8 Q. Who do you presently report to? 9 A. Mark Shelnitz, general counsel of W. R. 10 Grace. 11 Q. How long have you reported to 12 Mr. Shelnitz? 13 A. Since he became general counsel, which 14 was three or four years ago. I forget how long. 15 Q. Does April 2005 seem about right? 16 A. It seems about right, yes. 17 Q. Would you give me the positions you have 18 held at Grace and the approximate dates you held 19 each position? 20 A. When I was hired, I held the position of 21 senior litigation counsel and I became assistant 22 general counsel for litigation in — it was 23 around March of 2006. 24 Q. Is that your present position?</p>

2 (Pages 2 to 5)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. When you initially went to work at Grace,</p> <p>3 who did you report to?</p> <p>4 A. I reported to Robert Beber, B-e-b-e-r.</p> <p>5 Q. And how long did you report to Mr. Beber?</p> <p>6 A. Until he retired. He was general counsel</p> <p>7 of W. R. Grace. When he retired, I frankly don't</p> <p>8 recall the year or the date.</p> <p>9 Q. Who did you report to between the</p> <p>10 retirement of Mr. Beber and Mr. Shelnitz taking</p> <p>11 over as general counsel?</p> <p>12 A. I reported to David Siegel, S-i-e-g-e-l,</p> <p>13 who became general counsel after Mr. Beber.</p> <p>14 Q. Were you reporting to Mr. Siegel when</p> <p>15 Grace filed its petition for reorganization?</p> <p>16 A. Yes.</p> <p>17 MS. GRIFFIN: May I interrupt? I</p> <p>18 apologize. I'm Shannon Griffin with O'Melveny &</p> <p>19 Myers. I represent Arrowood Indemnity. And I</p> <p>20 thought we were going to do introductions. So I</p> <p>21 apologize for the interruption.</p> <p>22 But I would like to enter an exhibit</p> <p>23 before we take off on Arrowood's objections,</p> <p>24 which were filed last night. Everyone should</p>	<p style="text-align: right;">Page 8</p> <p>1 in the objection.</p> <p>2 And to the extent that the debtor</p> <p>3 implied on Friday that this was the one and only</p> <p>4 time that this witness would be provided, we</p> <p>5 object to any implication of that sort and</p> <p>6 reserve our rights to take another deposition as</p> <p>7 required.</p> <p>8 MS. SIMON: And my clients, Firemen's</p> <p>9 Fund Insurance Company, also joins in the</p> <p>10 objections and reserves its rights to depose the</p> <p>11 deponent at that time, if necessary.</p> <p>12 MR. SPENCER: Continental Casualty</p> <p>13 also joins in the objection and reserves its</p> <p>14 rights as stated by all other counsel previously.</p> <p>15 MS. ESAYIAN: From the debtor's</p> <p>16 perspective, everyone's reservations of rights</p> <p>17 are noted and I believe our position was clearly</p> <p>18 stated on Friday. And I won't take more time</p> <p>19 here.</p> <p>20 BY MR. SPEIGHTS:</p> <p>21 Q. Mr. Finke, were your general duties and</p> <p>22 responsibilities the same from 1989 until the</p> <p>23 bankruptcy?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 have received a copy. And I have copies for</p> <p>2 everybody here. But I would like to mark this as</p> <p>3 Exhibit 1 so I don't have to keep objecting</p> <p>4 throughout.</p> <p>5 MR. SPEIGHTS: I have not seen it so</p> <p>6 I would like to see it before you mark it.</p> <p>7 MS. GRIFFIN: Sure.</p> <p>8 (Finke Deposition Exhibit No. 1 was</p> <p>9 marked for identification.)</p> <p>10 MR. SPEIGHTS: Although it's normal</p> <p>11 for a party to mark its exhibits during its own</p> <p>12 examination, I certainly don't object to counsel</p> <p>13 marking it now to avoid having to state these</p> <p>14 same objections orally or restate them</p> <p>15 innumerable times.</p> <p>16 MS. GRIFFIN: Thank you.</p> <p>17 MR. BROWN: While we are doing that,</p> <p>18 so that we can avoid it. My clients, Government</p> <p>19 Employees Insurance Company, Columbia Insurance</p> <p>20 Company and Seaton Insurance Company and One</p> <p>21 Beacon America Insurance Company, join in those</p> <p>22 objections.</p> <p>23 MS. ALCABES: My clients as well,</p> <p>24 Travelers Casualty & Surety Company, also joins</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Can you generally describe what your</p> <p>2 duties and responsibilities were during that</p> <p>3 period?</p> <p>4 A. Primarily, I was responsible for</p> <p>5 oversight and management of asbestos property</p> <p>6 damage cases, including reporting to Grace</p> <p>7 management on the status or developments in those</p> <p>8 cases.</p> <p>9 I also was responsible for oversight</p> <p>10 of expert witnesses that Grace retained or</p> <p>11 Grace's counsel retained to testify in the</p> <p>12 asbestos property damage litigation.</p> <p>13 Q. Were you part of a, for lack of a better</p> <p>14 term, a team of lawyers working under Mr. Beber?</p> <p>15 A. Yes.</p> <p>16 Q. And what did you call the team?</p> <p>17 A. Just the asbestos litigation group</p> <p>18 informally.</p> <p>19 Q. When a case was filed against Grace, how</p> <p>20 was it decided which member of the group would be</p> <p>21 responsible for that case?</p> <p>22 A. Early in the process or shortly after the</p> <p>23 team was formed, the caseload was divided</p> <p>24 geographically so that each person of the team</p>

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

Page 30	Page 32
<p>1 did.</p> <p>2 Q. Was it searchable?</p> <p>3 A. To a limited extent, yes.</p> <p>4 Q. Who in your office was the person that</p> <p>5 you would go to if you needed something searched?</p> <p>6 A. I would have gone to my paralegal.</p> <p>7 Initially, it was Gail, whose last name I can't</p> <p>8 recall. And after Gail, to my paralegal that's</p> <p>9 still with us, Adie Hammond. A-d-i-e.</p> <p>10 Q. H-a-m-m-o-n-d?</p> <p>11 A. Yes.</p> <p>12 Q. Have you seen pages of the index?</p> <p>13 A. Yes.</p> <p>14 Q. Have you seen the entire index printed</p> <p>15 out?</p> <p>16 A. No.</p> <p>17 Q. Do you know how long the index would be,</p> <p>18 how many pages if you printed it out or how many</p> <p>19 gigabytes or whatever these computer people call</p> <p>20 the amount of it in the computer?</p> <p>21 A. No, I don't know. I think it would be</p> <p>22 extremely voluminous if it were printed out in</p> <p>23 hard copy. But I don't know by how much.</p> <p>24 Q. Does the index actually show the document</p>	<p>1 injury case. And then I would talk to Jay Hughes</p> <p>2 about that issue or the expert to determine</p> <p>3 either if he needed assistance relating to that</p> <p>4 issue or expert or if -- or just for my own</p> <p>5 edification to see if anything going on in this</p> <p>6 personal injury case might impact the property</p> <p>7 damage.</p> <p>8 Q. Who is Jay Hughes?</p> <p>9 A. Jay Hughes is an attorney with W. R.</p> <p>10 Grace. He has been with Grace longer than I</p> <p>11 have. He is still with Grace. And Jay's primary</p> <p>12 responsibility at Grace was to oversee the</p> <p>13 personal injury litigation.</p> <p>14 Q. Did he report to Mr. Beber before</p> <p>15 Mr. Beber's retirement?</p> <p>16 A. Yes.</p> <p>17 Q. And did he then report to Mr. Siegel</p> <p>18 while he was general counsel?</p> <p>19 A. Yes.</p> <p>20 Q. And does he presently report to</p> <p>21 Mr. Shelnitz?</p> <p>22 A. He presently reports to me.</p> <p>23 Q. I'd like to talk about Anderson before</p> <p>24 the bankruptcy a few minutes. First of all, see</p>
Page 31	Page 33
<p>1 like in a PDF format or is it just a list of the</p> <p>2 documents with certain information?</p> <p>3 A. It's a list of the documents with certain</p> <p>4 fields.</p> <p>5 Q. What fields?</p> <p>6 A. Product type, job sites, product names,</p> <p>7 dates, names of addressees, names of the sender</p> <p>8 or author. And number, a number had been</p> <p>9 assigned to each document. So the document</p> <p>10 number would appear. I don't recall what else.</p> <p>11 Q. Would that be a Bates stamp number?</p> <p>12 A. Yes.</p> <p>13 Q. And, as I understand it, someone with</p> <p>14 computer skills could search it by any of these</p> <p>15 fields?</p> <p>16 A. That's correct.</p> <p>17 Q. Did you have any involvement with the</p> <p>18 personal injury litigation before the bankruptcy?</p> <p>19 A. Very little.</p> <p>20 Q. What little did you have?</p> <p>21 A. On occasion, there may be an issue in a</p> <p>22 personal injury case that came to my attention or</p> <p>23 an expert involved in the property damage</p> <p>24 litigation would be appearing in a personal</p>	<p>1 if we can try to pin down when you had</p> <p>2 responsibility for Anderson. Did you have</p> <p>3 responsibility for Anderson when the venue motion</p> <p>4 was decided and the judge said it could be</p> <p>5 maintained in Hampton County?</p> <p>6 A. No.</p> <p>7 Q. Did you have responsibility for Anderson</p> <p>8 at the time of the evidentiary hearing on</p> <p>9 certification?</p> <p>10 A. Yes.</p> <p>11 Q. Did you have responsibility for Anderson</p> <p>12 when the motion to certify was filed and briefed?</p> <p>13 A. I believe so. I do recall reading the</p> <p>14 briefs. I don't recall specifically if that --</p> <p>15 if I did that because they had already been filed</p> <p>16 when I took over the case or if I had already</p> <p>17 assumed responsibility for the case and then they</p> <p>18 were filed. I just don't recall.</p> <p>19 Q. Do you recall whether you were involved</p> <p>20 in the decision to challenge the adequacy of</p> <p>21 Speights & Runyan?</p> <p>22 A. Yes.</p> <p>23 Q. And, yes, you recall you were involved?</p> <p>24 A. Yes.</p>

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

Page 162	Page 164
<p>1 A. My understanding is that the homeowner</p> <p>2 would have a claim against the personal injury</p> <p>3 trust.</p> <p>4 Q. Where is that set forth?</p> <p>5 A. I believe that's in the plan under the</p> <p>6 definition of indirect PI trust claim. I may not</p> <p>7 have the exact terminology there.</p> <p>8 Q. Does the indemnification cover defense as</p> <p>9 well as payment of the claim?</p> <p>10 A. That would be set forth in the PI TDP.</p> <p>11 And I would refer to that document before trying</p> <p>12 to answer your question. Because I'm not sure of</p> <p>13 the answer.</p> <p>14 Q. If somebody had sued Grace in 1979 for</p> <p>15 exposure to Monokote in the Jordan Hospital in</p> <p>16 Plymouth, Massachusetts, would someone at Grace</p> <p>17 have gone to see whether it had any records of</p> <p>18 Monokote being in the Jordan Hospital?</p> <p>19 A. This is a hypothetical lawsuit before</p> <p>20 1979?</p> <p>21 Q. No. In 1999. I said before the</p> <p>22 bankruptcy. I meant to say that. I may have</p> <p>23 misspoken.</p> <p>24 A. Maybe I misheard it. Okay. I'm sorry.</p>	<p>1 minute break.</p> <p>2 (The deposition was recessed from</p> <p>3 3:46 p.m. to 3:53 p.m.)</p> <p>4 EXAMINATION</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Mr. Finke, my name is Michael Brown and I</p> <p>7 represent the cast of foreign insurance companies</p> <p>8 that I identified earlier.</p> <p>9 I want to go back and fill in some of</p> <p>10 the blanks in terms of your employment history</p> <p>11 with Grace. And I want to start by asking the</p> <p>12 role that you had pre-petition and then go to</p> <p>13 post-petition.</p> <p>14 As I understand it, you were senior</p> <p>15 litigation counsel at the time the petition was</p> <p>16 filed?</p> <p>17 A. Yes.</p> <p>18 Q. And prior to that, your primary</p> <p>19 responsibility was with PD claims, is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And I think you identified some minimal</p> <p>23 involvement on the PI side?</p> <p>24 A. Right. Very sporadic.</p>
Page 163	Page 165
<p>1 Q. 1999. Somebody serves a complaint</p> <p>2 alleging mesothelioma exposure in the Jordan</p> <p>3 Hospital in Plymouth, Mass, would the Grace</p> <p>4 person handling the PI claims check to see if</p> <p>5 there were any records showing Monokote had been</p> <p>6 installed in the Jordan Hospital?</p> <p>7 A. I don't know.</p> <p>8 Q. Who would be the best person to ask that</p> <p>9 question to?</p> <p>10 A. Jay Hughes.</p> <p>11 Q. Is Mr. Hughes in Columbia or Boca?</p> <p>12 A. He is based in Cambridge, Massachusetts.</p> <p>13 MR. SPEIGHTS: That's all I have at</p> <p>14 this time, Mr. Finke. I reserve my position to</p> <p>15 be able to pursue those questions which counsel</p> <p>16 has instructed you not to answer and other</p> <p>17 questions that flow from that, if I am permitted</p> <p>18 to proceed along those lines.</p> <p>19 Would somebody who wants to question</p> <p>20 the witness like to have this chair or can we do</p> <p>21 it from wherever you are?</p> <p>22 MR. BROWN: Does anyone else on the</p> <p>23 PD side have any questions?</p> <p>24 Okay. Why don't we take a five</p>	<p>1 Q. And that was primarily when there was a</p> <p>2 PD expert, as I understood it, that may have some</p> <p>3 application to PI claims?</p> <p>4 A. More or less, yes. Or was involved in</p> <p>5 some way in a property – I'm sorry, personal</p> <p>6 injury case, which might have ramifications for</p> <p>7 property damage litigation.</p> <p>8 Q. Okay. And then other than what you</p> <p>9 described earlier, you had no involvement on the</p> <p>10 PI side?</p> <p>11 A. That's right.</p> <p>12 Q. Okay. Who did have the involvement on</p> <p>13 the PI side?</p> <p>14 A. Jay Hughes.</p> <p>15 Q. And what was Mr. Hughes' title</p> <p>16 pre-petition?</p> <p>17 A. I believe it was also senior litigation</p> <p>18 counsel.</p> <p>19 Q. Okay. So you were senior litigation</p> <p>20 counsel on PD, he was senior litigation counsel</p> <p>21 on PI?</p> <p>22 A. Correct.</p> <p>23 Q. And who did you report to at that time?</p> <p>24 A. When I first started, it was in 1989, it</p>

42 (Pages 162 to 165)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p>Page 166</p> <p>LPO</p> <p>1 was Robert Beber.</p> <p>2 Q. How do you say that?</p> <p>3 A. Beber. B-e-b-e-r.</p> <p>4 Q. Okay. Beber?</p> <p>5 A. Right.</p> <p>6 I don't recall his title at the time.</p> <p>7 He was not general counsel. He became general</p> <p>8 counsel a year to two after that.</p> <p>9 Q. Okay. And at the time of the petition,</p> <p>10 that's who you were reporting to?</p> <p>11 A. At the time of the Chapter 11 petition, I</p> <p>12 was reporting to David Siegel, general counsel.</p> <p>13 Q. Okay. Mr. Siegel had replaced Mr. Beber</p> <p>14 by that point?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And how about Mr. Hughes at the</p> <p>17 time of the petition? Who did he report to</p> <p>18 directly?</p> <p>19 A. Also to Mr. Siegel.</p> <p>20 Q. And Mr. Siegel was the GC at that time?</p> <p>21 A. Yes. PP Obj: R; BE</p> <p>22 Q. Did Grace have national coordinating</p> <p>23 counsel for PI claims pre-petition?</p> <p>24 A. I don't know if they were actually deemed</p>	<p>Page 168</p> <p>LPO</p> <p>1 personal injury cases.</p> <p>2 Q. Okay. Mr. Hughes was the individual who</p> <p>3 dealt primarily with the outside counsel handling</p> <p>4 PI claims?</p> <p>5 A. Yes.</p> <p>6 Q. Who else at Grace was involved in the</p> <p>7 handling of PI claims?</p> <p>8 A. Really, no one else. He had a staff of</p> <p>9 legal assistants that helped to maintain the</p> <p>10 files. But Jay was really the only in-house</p> <p>11 attorney involved with the personal injury cases.</p> <p>12 Q. What about Mr. Beber?</p> <p>13 A. He would have been involved as well to</p> <p>14 the extent of being Jay's superior.</p> <p>15 Q. And then Mr. Siegel after Mr. Beber?</p> <p>16 A. After Mr. Beber, right.</p> <p>17 Q. All right. You I believe testified</p> <p>18 earlier this morning that you became assistant GC</p> <p>19 for litigation in March of 2006, is that correct?</p> <p>20 A. I think so.</p> <p>21 Q. Was that a new position?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And if I understood your testimony</p> <p>24 earlier today, that from that point forward,</p>
<p>Page 167</p> <p>LPO</p> <p>1 or considered national coordinating counsel. But</p> <p>2 the Casner & Edwards law firm in Boston --</p> <p>3 Q. I'm sorry. What was the name of that?</p> <p>4 A. Casner & Edwards, C-a-s-n-e-r, & Edwards</p> <p>5 law firm in Boston performed some of the</p> <p>6 functions of national coordinating counsel.</p> <p>7 Q. Okay. Were they also local counsel for</p> <p>8 the Boston area?</p> <p>9 A. I believe they were, yes. Yes, in fact,</p> <p>10 I think they were.</p> <p>11 Q. Okay. And what were the national</p> <p>12 coordinating counsel functions that they</p> <p>13 undertook?</p> <p>14 A. Supported local counsel throughout the</p> <p>15 country in terms of providing documents and</p> <p>16 transcripts, coordinating the use of experts. I</p> <p>17 think they were also involved in responding to</p> <p>18 standard discovery requests.</p> <p>19 Q. And how many sets of counsel around the</p> <p>20 country did Grace have with respect to the</p> <p>21 defense of PI claims?</p> <p>22 A. Probably -- I'm going to say 25. That's</p> <p>23 just a little bit more than a guess. As I said,</p> <p>24 I wasn't involved with the litigation of the</p>	<p>Page 169</p> <p>LPO</p> <p>1 Mr. Hughes reported to you rather than reporting</p> <p>2 to the general counsel?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So from March of 2006 on, is it</p> <p>5 fair to say you have played some role on the PI</p> <p>6 side?</p> <p>7 A. Yes. But I would describe it still as a</p> <p>8 minor role.</p> <p>9 Q. Can you describe for me what the role has</p> <p>10 been?</p> <p>11 A. More coordination with the other parts of</p> <p>12 our reorganization effort to make sure that</p> <p>13 others working on the reorganization such as</p> <p>14 finance, such as those who prepare our SEC</p> <p>15 disclosure documents, were kept informed of</p> <p>16 developments, facts, relating to the personal</p> <p>17 injury claims in the Chapter 11.</p> <p>18 Q. I think you used the term you were</p> <p>19 coordinating the parts. Can you tell me what you</p> <p>20 mean by the parts?</p> <p>21 A. Well, yes. When I -- part of the role of</p> <p>22 assistant general counsel in the Chapter 11 was</p> <p>23 to coordinate and oversee all of the individuals</p> <p>24 involved, both at Grace as well as outside</p>

43 (Pages 166 to 169)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

Page 174	Page 176
<p>1 A. Pre-petition or post-petition?</p> <p>2 Q. Post-petition we are talking about. As</p> <p>3 you were describing his role in the negotiations.</p> <p>4 A. I don't know.</p> <p>5 Q. And was your role in dealing with PI</p> <p>6 issues and the resolution of PI issues indirect</p> <p>7 in the sense that Mr. Hughes reported to you or</p> <p>8 did you have any direct involvement?</p> <p>9 A. It was really indirect.</p> <p>10 Q. And besides Mr. Hughes, who else was</p> <p>11 involved in that effort on the Grace side?</p> <p>12 A. Mark Shelnitz, the general counsel.</p> <p>13 Robert Tarola.</p> <p>14 Q. I'm sorry?</p> <p>15 A. Robert Tarola, T-a-r-o-l-a, the former</p> <p>16 CFO. The CEO, Fred Festa, had some involvement.</p> <p>17 And outside counsel, David Bernick. And I</p> <p>18 believe – I don't know if Ted Freedman was</p> <p>19 involved with the negotiations or came in after a</p> <p>20 deal had been reached.</p> <p>21 Q. Other than the individuals you have just</p> <p>22 run through on the Grace side, was there anyone</p> <p>23 else that you can recall that was on the Grace</p> <p>24 negotiating team for the resolution of the PI</p>	<p>1 the issue pre-petition. Have you had any role or</p> <p>2 did you have any role in connection with Grace's</p> <p>3 liability insurance program before the petition</p> <p>4 date?</p> <p>5 A. No.</p> <p>6 Q. Who was responsible for this at Grace?</p> <p>7 A. Bob Beber handled it from the litigation</p> <p>8 standpoint. And Jeff Posner was in charge of our</p> <p>9 risk management function, including insurance.</p> <p>10 Q. When did Mr. Posner leave Grace?</p> <p>11 A. I honestly don't know. I don't recall.</p> <p>12 Q. Was it after the petition date?</p> <p>13 A. I believe it was before.</p> <p>14 Q. And his title immediately before he left</p> <p>15 was risk manager?</p> <p>16 A. I don't know.</p> <p>17 Q. But that's the function that he had, was</p> <p>18 risk manager for Grace?</p> <p>19 A. Yes.</p> <p>20 Q. Post-petition, have you had any role in</p> <p>21 connection with Grace's liability insurance</p> <p>22 program?</p> <p>23 A. A limited one. Limited to the extent of</p> <p>24 motions that have been made or objections</p>
Page 175	Page 177
<p>1 claims?</p> <p>2 A. Pam Zilly was involved in some of the</p> <p>3 discussions as well. She is with Blackstone.</p> <p>4 She is our financial advisor.</p> <p>5 Q. What was her role?</p> <p>6 A. Beyond being financial adviser, I don't</p> <p>7 know. I wasn't directly involved.</p> <p>8 Q. What was Mr. Festa's role?</p> <p>9 A. I think primarily to ensure that the</p> <p>10 other parties understood that the Grace</p> <p>11 representatives there spoke with the full</p> <p>12 authority of the company, but, again, I was not</p> <p>13 present at the meetings and discussions that he</p> <p>14 attended with the personal injury</p> <p>15 representatives.</p> <p>16 Q. Were you at any of the meetings with the</p> <p>17 personal injury representatives?</p> <p>18 A. No.</p> <p>19 Q. I gather Mr. Hughes was?</p> <p>20 A. I believe he was, yes.</p> <p>21 Q. And Mr. Shelnitz?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I want to shift gears for a second</p> <p>24 and turn to insurance. And, again, looking at</p>	<p>1 asserted by insurance. To the extent an issue is</p> <p>2 being litigated, I have been involved in</p> <p>3 reviewing motion papers and related documents,</p> <p>4 participating in conference calls on strategy.</p> <p>5 Q. For dealing with the insurance?</p> <p>6 A. For dealing with the insurance. Some of</p> <p>7 the insurance issues. Certainly not all of them.</p> <p>8 Q. Can you tell me which issues you're</p> <p>9 talking about?</p> <p>10 A. Issues related to the claims by Keneb</p> <p>11 pipeline that they believe they are entitled to</p> <p>12 insurance coverage. In connection with</p> <p>13 remediation costs or potential responsibility for</p> <p>14 remediation costs in connection with the Otis</p> <p>15 pipeline.</p> <p>16 There were a few others. I'm just</p> <p>17 drawing a blank right now.</p> <p>18 Q. Have you had any role in the Scotts</p> <p>19 adversary proceeding?</p> <p>20 A. Yes. Thank you. Yes, I have reviewed</p> <p>21 the papers, not that there have been much –</p> <p>22 there has been much recently. But I did review</p> <p>23 the adversary proceeding papers when Scotts first</p> <p>24 commenced its adversary proceeding. And, again,</p>

45 (Pages 174 to 177)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p style="text-align: right;">Page 178 CPO</p> <p>1 participated in conference calls relating to 2 their claim that they are entitled to coverage. 3 Q. And with whom were these conference calls 4 that you participated? 5 A. Outside counsel from Kirkland & Ellis. 6 And Mr. Posner is often on those calls. I think 7 that's -- and it's usually the same group. 8 Q. Did you play any role in the manner in 9 which insurance is handled under the plan? 10 A. No. 11 Q. Who did? 12 A. Other than Kirkland & Ellis, I don't know 13 who else was involved. 14 Q. Other than what you have just described, 15 have you had any role in the manner in which 16 insurance, unsettled insurance, is handled under 17 the plan? 18 A. No. 19 Q. How about any role in connection with the 20 manner in which settled insurance is handled 21 under the plan? 22 A. No. 23 Q. Did anyone replace Mr. Posner as the risk 24 manager?</p>	<p style="text-align: right;">Page 180</p> <p>1 But I don't think that I did. 2 Q. Do you know, if it wasn't you, do you 3 know who was involved at Grace in the preparation 4 of this document? 5 And just for clarification, it's an 6 8-K. It has attachments to it. You probably 7 noted. 8 A. Right. 9 Q. One is a pre release and the other is a 10 terms sheet. So we can probably take -- why 11 don't we take them one by one. 12 A. Typically, the 8-K's are prepared by an 13 in-house attorney, Michael Conron, who obtains 14 input and facts from persons who are involved 15 firsthand with the events being reported. In 16 this case, I believe he would have obtained the 17 details from Mark Shelnitz since Mr. Shelnitz was 18 personally involved in the negotiations. 19 Q. Did he receive any information from you? 20 A. No. 21 Q. Okay. How about the press release that's 22 attached to it? There is a couple of names at 23 the top from media relations and investor 24 relations. But do you know who prepared the</p>
<p style="text-align: right;">Page 179 CPO</p> <p>1 A. No. He basically still serves the same 2 function but as an outside consultant. PP Obj: 3 Q. Okay. Thank you. R 4 (Finke Deposition Exhibit No. 12 5 was marked for identification.) 6 BY MR. BROWN: 7 Q. Mr. Finke, you have what's been marked 8 Exhibit 12. If you would take a few moments to 9 look at it. My first question is going to be 10 whether you have ever seen it before? 11 A. Yes, I have seen it before. 12 Q. Can you identify it for me? 13 A. It's Form 8K that Grace filed with the 14 SEC announcing its agreement in principle with 15 the personal injury committee and others to 16 resolve present and future asbestos related PI 17 claims. 18 Q. When did you first see it? 19 A. I believe it was shortly after it was 20 filed. A day or two after it was filed. 21 Q. Had you seen drafts of it before it was 22 filed? 23 A. I don't believe I did. But I -- I cannot 24 be a hundred percent sure I didn't see a draft.</p>	<p style="text-align: right;">Page 181</p> <p>1 press release? 2 A. Where are you at? I'm not finding it. 3 Q. I think it's probably page five it starts 4 at. 5 A. Okay. Okay. There we go. William 6 Corcoran is -- I forget if he is executive 7 vice-president or senior vice-president. And he 8 is in charge of media relations, among other 9 things. Typically, Mr. Corcoran prepares press 10 releases. In the same manner as I described, I 11 described Mr. Conron preparing 8-K's. He would 12 have obtained the information from whoever was 13 personally involved. 14 Q. And would that have been Mr. Shelnitz or 15 someone else? 16 A. I'm pretty confident it would have been 17 Mr. Shelnitz. 18 Q. But it was not you? 19 A. Correct. 20 Q. Let's go to the terms sheet, which 21 appears to begin on page eight. 22 A. Um-hmm. 23 Q. Had you seen this terms sheet prior to 24 the filing of the 8-K?</p>

46 (Pages 178 to 181)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p>CPO</p> <p>1 A. I believe I did. 2 Q. When? 3 A. I think I saw it in a prior draft. 4 Within a few days of the final, the final 5 version. 6 Q. Were you involved in preparing any of the 7 drafts? 8 A. No, I was not. 9 Q. Do you know who was? 10 A. No, I don't. I believe Mr. Shelnitz was 11 involved along with outside counsel. 12 Q. How about Mr. Hughes? 13 A. I don't know. 14 Q. Do you know who was involved for the 15 other constituencies that are a party to the 16 terms sheet? 17 A. No, I do not. 18 Q. In the first line of the text, it says, 19 this term sheet sets forth certain of the 20 principal terms and conditions. 21 Are there other principal terms and 22 conditions that are not reflected or were not 23 reflected in the terms sheet? 24 A. I don't know. I wasn't involved in the</p> <p>PP Obj: R</p> <p>Page 182</p>	<p>CPO</p> <p>1 consent of any of its insurers prior to agreeing 2 to that term with the other constituencies to the 3 terms sheet? 4 A. I don't know. 5 Q. Who would know? 6 A. Mr. Shelnitz. 7 Q. If you turn to the next page on page nine 8 under v. I want to direct your attention to the 9 second paragraph that begins with the word, 10 provided. 11 A. Okay. 12 Q. Do you understand what's being referred 13 to in that section? 14 A. No, I'm not sure what's being referred to 15 by the foregoing. 16 (Finke Deposition Exhibit Nos. 13 and 17 14 were marked for identification.) 18 BY MR. BROWN: 19 Q. Mr. Finke, you have two documents that 20 have been marked Exhibit 13 and one is Exhibit 14 21 in front of you. Can you just identify them both 22 for me? 23 A. Exhibit 13 is debtor's preliminary list 24 of witnesses that they intend to call during the</p> <p>PP Obj: R, BE</p> <p>Page 184</p>
<p>CPO</p> <p>1 discussions. I don't know if there were other 2 principal terms and conditions that have been 3 agreed upon at that time and not included. 4 Q. Were any of Grace's insurers involved in 5 the discussions that led up to the execution of 6 the terms sheet? 7 A. Not to my knowledge. But, again, I 8 wasn't personally involved in the discussions. 9 Q. Do you know whether Grace's insurers were 10 purposely left out of any discussions leading up 11 to the terms sheet? 12 A. Not that I know of. 13 Q. Who would be the individual at Grace, to 14 your knowledge, that would know the answer to 15 those questions? 16 A. Mr. Shelnitz. 17 Q. If you look on the first page down at 18 I.A.1.b, titled, Insurance? 19 A. Yes. 20 Q. There is a reference there to the 21 assignment of insurance policies and all 22 insurance proceeds. Do you see that? 23 A. Yes. 24 Q. Did Grace, to your knowledge, seek the</p> <p>PP Obj: R</p> <p>Page 183</p>	<p>CPO</p> <p>1 confirmation hearing and is dated March 13, 2009. 2 Exhibit 14 is the second amended case 3 management order related to the first amended 4 joint plan of reorganization and was ordered on 5 January 29, 2009. 6 Q. Would I be correct if I said that you 7 have seen both of these documents before? 8 A. Yes, you would. 9 Q. If you look at the witness list, you'll 10 note that your name appears first? 11 A. Yes. 12 Q. As someone who, at least on a preliminary 13 basis, is going to testify in Phases I and II of 14 the confirmation hearing? 15 A. Um-hmm. 16 Q. About company information. 17 What is the company information that 18 you possess relevant to plan confirmation? 19 MS. ESAYIAN: Objection to the form 20 of the question. You can answer, if you can. 21 THE WITNESS: I was asked by outside 22 counsel to be available to testify at one or both 23 of the confirmation hearings to the extent they 24 needed someone to present their basic company</p> <p>PP Obj: R, BE</p> <p>Page 185</p>

47 (Pages 182 to 185)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p style="text-align: right;">Page 186</p> <p>1 information, such as anything from the nature of 2 our businesses to number of employees and more 3 specifically with respect to our asbestos 4 litigation and claims, both historical, meaning 5 pre-petition litigation history relating to 6 asbestos claims, as well as the asbestos related 7 claims filed in the Chapter 11. 8 The only thing I wanted to add was, 9 in a subsequent discussion, it was decided that 10 Jay Hughes would most likely handle any issues 11 relating or testimony relating to personal 12 injury -- asbestos personal injury claims and 13 issues. 14 BY MR. BROWN: 15 Q. That was going to be my question. You 16 used the generic term asbestos litigation. Did 17 you mean PD asbestos litigation? 18 A. Well, initially the discussion was 19 generic. But, as I say, subsequently it was 20 narrowed to property damage and attic insulation 21 within my purview. 22 Q. To your knowledge, you're not going to be 23 proffering any testimony on PI issues? 24 A. That is my understanding, yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 second phase of the confirmation hearing, are 2 you, to your knowledge, being proffered to offer 3 any testimony with respect to i or iii? 4 A. I think that's unknown at this point. 5 Q. Is that true for both i and iii? 6 A. Yes. 7 Q. Okay. I want to go back to the 8 preliminary witness list. And I think most of 9 these individuals on here we have already 10 identified in terms of what their acknowledge is. 11 Pam Zilly, she is with the Blackstone Group, she 12 is the financial person? 13 A. Correct. 14 Q. I believe you said Denise Martin is a PD 15 expert? 16 A. Yes, she is an expert. She'll offer 17 expert testimony concerning the likelihood that 18 future property damage and ZAI claims will be 19 brought. 20 Q. Okay. I believe I heard earlier the name 21 Hudson LaForce. Who is that? 22 A. He is our current chief financial 23 officer. 24 Q. And Derrick Tay?</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Would your answer be the same with 2 respect to insurance related issues? 3 A. Yes. 4 Q. How about with the manner in which 5 indirect asbestos PI trust claims are handled 6 under the plan? 7 A. I would expect that Jay Hughes would 8 handle that. 9 Q. Okay. If you can look at what's been 10 marked as Exhibit 14, the second amended case 11 management order. I want to direct your 12 attention specifically to paragraph two. 13 The second sentence in paragraph two 14 talks about the first phase of the confirmation 15 hearing. Do you see that? 16 A. Yes. 17 Q. And there are three Romanettes in that 18 sentence. 19 Do I understand you correctly that 20 you are not, to your knowledge, being proffered 21 to offer any testimony relevant to i or ii? 22 A. That's correct. 23 Q. And if you go to the next sentence, which 24 talks about the topics to be addressed in the</p>	<p style="text-align: right;">Page 189</p> <p>1 A. He is a Canadian restructuring attorney 2 who represents Grace in Canada concerning the 3 Canadian ZAI claimants. 4 Q. And Mr. Dunbar, he is an outside 5 modelling consultant? 6 A. Yes, I believe that's right. 7 Q. Mr. Hughes we have talked about. 8 What about all the doctors? 9 A. Can you be more specific what you're 10 asking? 11 Q. What's the area? Have each of the other 12 witnesses listed here starting with I guess 13 Dr. Florence, are they all experts? 14 A. Other than Jay Hughes, yes. 15 Q. And they have all submitted reports at 16 this point? 17 A. I presume so. 18 (Finke Deposition Exhibit No. 15 was 19 marked for identification.) 20 BY MR. BROWN: 21 Q. All right. Mr. Finke, you have before 22 you a document marked Exhibit 15. The first 23 question is, can you identify it? 24 A. Exhibit 15 is debtors' response to</p>

48 (Pages 186 to 189)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p>CPD</p> <p>PP Obj: R Page 190</p> <p>1 Government Employees Insurance Company and 2 Columbia Insurance Company's requests for 3 admission, interrogatories and requests for 4 production of documents. 5 Q. And I gather you have seen this document 6 before? 7 A. Yes, I have. 8 Q. Okay. If you would turn to the last 9 page. 10 A. Um-hmm. 11 Q. Is that your signature on the 12 verification? 13 A. Yes, it is. 14 Q. The verification is worded a little 15 oddly. At least in my experience. 16 The first question I have for you is 17 that, do you actually have any personal knowledge 18 of the information that's contained in the 19 responses to the interrogatories that you 20 verified? 21 A. Well, I'm just going to note for the 22 record that it's a rather long document. So if 23 you want him to read the whole thing, that's 24 going to take a while.</p>	<p>CPD</p> <p>Page 192</p> <p>PP Obj: R</p> <p>1 Q. It says that, prior to September 19, 2 2008, which is when the initial joint plan was 3 filed, correct? 4 A. Yes. 5 Q. Okay. It says, prior to that time, 6 debtors did not communicate or consult with GEICO 7 or Columbia regarding the proposed terms of the 8 plan, asbestos PI trust agreement, asbestos 9 insurance transfer agreement with TDP. 10 Why not? 11 A. I was not involved in whatever decision 12 was made concerning communicating or consulting 13 with the insurers. 14 Q. And would that have been Mr. Shelnitz 15 again that was involved in that? 16 A. I don't know that. But that is who I 17 would -- who I would ask. 18 Q. I want to direct your attention to the 19 fourth interrogatory. 20 A. Okay. 21 Q. In Grace's response to interrogatory 22 four, the latter portion of it, it says, but also 23 does not prohibit participation. Do you see 24 that?</p>
<p>CPD</p> <p>PP Obj: R Page 191</p> <p>1 Q. I don't want him to read the whole thing. 2 If you turn to page 50. 3 A. I was just going to read the -- review 4 the answers to interrogatories. 5 In general, no, I would not have 6 firsthand knowledge of most of the facts or the 7 facts asserted in the responses to the 8 interrogatories. 9 Q. In your verification, you note, sort of 10 the middle or halfway down, that the responses 11 are true and correct to the best of my personal 12 knowledge or based on information supplied to me 13 by others. 14 A. Right. 15 Q. Who are the others? 16 A. Primarily counsel at Kirkland & Ellis. 17 Q. Anyone else? 18 A. No, I don't believe so. 19 Q. Okay. Can I direct your attention to the 20 first interrogatory? 21 A. Um-hmm. 22 Q. Just let me know when you're finished 23 reading it. 24 A. Okay. I'm ready.</p>	<p>CPD</p> <p>Page 193</p> <p>PP Obj: BE</p> <p>1 A. Yes. 2 Q. Could you describe for me your 3 understanding of the manner in which Grace's 4 insurance companies could participate in the 5 investigation and evaluation defense in allowance 6 or settlement of the asbestos PI claims in the 7 event the plan is confirmed? 8 A. My understanding of that provision is the 9 insurers could negotiate with the PI trust for 10 whatever role the insurers would seek to have 11 with respect to the claim submitted to the PI 12 trust. 13 Q. And with whom would they be negotiating 14 specifically, the individuals? 15 A. Well, the trustees. Whoever that is. 16 Q. Would the TAC be involved in that 17 process? 18 A. I would not know that. I do not know 19 that. 20 Q. So it's your understanding that the only 21 way in which the insurers would be involved was 22 through some sort of negotiation with the trust? 23 MS. ESAYIAN: Objection to 24 foundation. But you can answer, if you can.</p>

49 (Pages 190 to 193)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p>CPO</p> <p>Page 194</p> <p>1 THE WITNESS: I wouldn't say it's the 2 only way because I haven't -- I'm not 3 knowledgeable enough about the manner in which 4 the trust would operate to know whether that's 5 the only avenue. 6 BY MR. BROWN: 7 Q. It's the only one you're aware of? 8 A. It is the only one I am aware of, yes. 9 Q. Is there someone that has some knowledge 10 about other mechanisms by which Grace's insurers 11 could be involved in the topics that are 12 identified in interrogatory number four? 13 A. I doubt very much that anyone at Grace 14 would have such knowledge since I don't believe 15 anybody at Grace has been involved in 16 bankruptcies before or asbestos 524 G trusts. 17 Q. If not at Grace, where or who? 18 A. You would have to consult with 19 experienced bankruptcy counsel. 20 Q. Kirkland & Ellis? 21 A. They are taken. 22 Q. Okay. 23 MR. BROWN: Why don't we take a five 24 minute break.</p>	<p>CPO</p> <p>Page 196</p> <p>1 interrogatories that have been propounded by 2 insurers. 3 Q. Is it fair to say that you didn't have 4 any independent knowledge of any of the responses 5 that were given to the insurance companies? 6 A. The answer is if I had -- if I had any, 7 it would be very little. I hate to make the 8 sweeping statement that there is not a single 9 answer. 10 Q. I'm just trying to save you the question 11 from seven other lawyers. 12 A. I understand. I just don't want to be 13 caught with a generalization where somebody finds 14 an exception. 15 Q. Okay. Fair enough. 16 Have you either pre-petition or 17 post-petition had occasion to review the terms of 18 any of Grace's insurance policies? 19 A. Certain specific provisions I have 20 reviewed. I have not read any of the policies in 21 their entirety. But, for example, in connection 22 with the Scotts adversary proceeding, I did 23 review the I guess relevant provisions of the 24 policy that Scotts is relying on.</p>	<p>PP Obj: R</p>
<p>CPO</p> <p>Page 195</p> <p>1 THE WITNESS: Okay. 2 (Deposition recessed from 4:52 p.m. 3 to 5:03 p.m.) 4 BY MR. BROWN: 5 Q. Mr. Finke, I understand you had a 6 clarification on one of your responses? 7 A. Yes. With respect to Exhibit 15, I had 8 identified counsel as Kirkland & Ellis as having 9 supplied information upon which I relied in 10 connection with the debtor's interrogatory 11 responses. An additional person that I forgot 12 about was, but who did review the interrogatory 13 responses, was Jeff Posner. I also relied on his 14 review and comments concerning the answers. 15 Q. Did Mr. Posner review all of the answers 16 or were there certain ones that he passed on? 17 A. My understanding is he reviewed all of 18 them. 19 Q. The question will probably come up. But 20 there is a lot of other insurers here that served 21 interrogatories on you, on Grace. Is the answer 22 the same for all of them as well? 23 A. Yes. As far as I know, he reviewed all 24 of the interrogatory answers or answers to</p>	<p>Page 197</p> <p>1 Q. By that, do you mean the vendor 2 endorsement? 3 A. Yes. 4 Q. Anything else? 5 A. There might have been a few, very few 6 other portions of policies that I reviewed. But 7 nothing specific comes to mind. 8 Q. How about in connection with Keneb's 9 claims? Have you reviewed any policies in 10 connection with that? 11 A. I have not. 12 Q. You're aware, are you not, that Grace had 13 a number of pre-petition settlement agreements 14 with various insurers? 15 A. Yes. 16 Q. Have you reviewed any of those 17 agreements? 18 CPO A. I have not. 19 Q. You mentioned I guess that you had 20 reviewed the complaint, I think, in the Scotts 21 adversary? 22 A. Yes. 23 Q. When is the last time you reviewed that 24 complaint?</p>	<p>PP Obj: BE</p>

50 (Pages 194 to 197)

W.R. Grace & Co., et al.
RICHARD CHARLES FINKE

<p>CPD</p> <p>PP Obj: BE</p> <p>Page 198</p> <p>1 A. I don't think I have reviewed it since</p> <p>2 shortly after they filed it.</p> <p>3 Q. Back in the fall of 2004?</p> <p>4 A. That sounds right, yeah.</p> <p>5 Q. Is that when you reviewed the vendor</p> <p>6 endorsement that you just referred to?</p> <p>7 A. Yes. All at the same time.</p> <p>8 Q. Do you have an understanding as to how</p> <p>9 the claims that Scotts has against the various</p> <p>10 insurers that are named in the adversary</p> <p>11 proceeding, how those claims are treated under</p> <p>12 the plan?</p> <p>13 A. I believe they are treated as indirect PI</p> <p>14 trust claims under the plan.</p> <p>15 Q. And what does that mean in real terms?</p> <p>16 A. That the insurers' claims would be</p> <p>17 presented to the or submitted to the PI trust.</p> <p>18 MS. ESAYIAN: Are you asking about</p> <p>19 the insurers claims or Scotts' claims?</p> <p>20 MR. BROWN: I was asking about the</p> <p>21 Scotts claims against the insurers.</p> <p>22 THE WITNESS: I apologize. I thought</p> <p>23 you were referring to any insurers' claims</p> <p>24 resulting from coverage of Scotts' claims.</p>	<p>Page 200</p> <p>1 have been available has been exhausted.</p> <p>2 Q. To the extent that the claims by Keneb do</p> <p>3 give rise to claims by the insurers, how are they</p> <p>4 treated under the plan, to your knowledge?</p> <p>5 A. That I do not know.</p> <p>6 CPD (Finke Deposition Exhibit No. 16 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BROWN:</p> <p>9 Q. All right, Mr. Finke, you have before you</p> <p>10 Exhibit 16. Can you identify this document?</p> <p>11 A. Yes. This is the debtors' response to</p> <p>12 One Beacon America Insurance Company and Seaton</p> <p>13 Insurance Company's requests for admission,</p> <p>14 interrogatories and requests for production of</p> <p>15 documents.</p> <p>16 Q. Okay. And you'll note that on page 21,</p> <p>17 the interrogatory responses begin?</p> <p>18 A. Yes.</p> <p>19 Q. And your verification, I believe, is</p> <p>20 essentially identically worded to the one we just</p> <p>21 looked at for GEICO and Columbia, is that</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And am I correct that the direct source</p> <p>PP Obj: R</p>
<p>CPD</p> <p>PP Obj: BE</p> <p>Page 199</p> <p>1 Scotts' claims, I believe those are</p> <p>2 also indirect PI trust claims.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. And is it your understanding that they</p> <p>5 are enjoined in their entirety as against the</p> <p>6 insurers?</p> <p>7 MS. ESAYIAN: Objection to form. But</p> <p>8 you can answer, if you can.</p> <p>9 CPD THE WITNESS: I don't know.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. Do you have an understanding as to</p> <p>12 whether the claims that Keneb is asserting give</p> <p>13 rise to any claims by certain insurers against</p> <p>14 Grace?</p> <p>15 A. I think, in theory, my understanding is</p> <p>16 that, in theory, it could, they could, Keneb's</p> <p>17 claims could give rise. But that the likelihood</p> <p>18 that there is any coverage available is very</p> <p>19 small.</p> <p>20 Q. Coverage available to --</p> <p>21 A. Keneb.</p> <p>22 Q. Do you understand what the reason for</p> <p>23 that is or the basis is for that statement?</p> <p>24 A. Only that what coverage might otherwise</p>	<p>CPD</p> <p>Page 201</p> <p>1 of any knowledge with respect to the responses</p> <p>2 comes either from Kirkland & Ellis or from</p> <p>3 Mr. Posner?</p> <p>4 A. That's correct.</p> <p>5 Q. You don't have any personal knowledge of</p> <p>6 the responses?</p> <p>7 A. No, I do not.</p> <p>8 Q. Let me direct your attention to</p> <p>9 interrogatory number three and the response to</p> <p>10 it.</p> <p>11 CPD A. Okay.</p> <p>12 Q. Were you involved in the events leading</p> <p>13 up to the January 13, 2005 amended joint plan</p> <p>14 that Grace filed?</p> <p>15 A. I was involved in certain aspects or</p> <p>16 certain sections of the plan.</p> <p>17 Q. Did you play a role with that plan</p> <p>18 similar to the one you played with the joint</p> <p>19 plan?</p> <p>20 A. In general, yes.</p> <p>21 Q. Are you familiar with the term resolved</p> <p>22 that was used to describe the insurance policies</p> <p>23 under that prior plan?</p> <p>24 A. I remember the prior plan included that</p> <p>PP Obj: R</p>

51 (Pages 198 to 201)